National Labor Relations Board Weekly Summary of

NLRB Cases

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Alton H. Piester, LLC (11-CA-21531; 353 NLRB No. 33) Newberry, SC Sept. 30, 2008. The Board reversed the administrative law judge's dismissal of the allegations that the Respondent violated Section 8(a)(1) of the Act when: 1) its owner told employees that if they did not like the Respondent's new billing practice, which affected their rate of compensation, they could "clean out their trucks and move to another job"; 2) its secretary, in the presence of the owner, told an employee that if he was unhappy working for the Respondent he should "clean out his truck"; and 3) it discharged an employee because he engaged in protected concerted activity. The discharged employee's actions, which included repeating an earlier protected concerted complaint and voicing an individualized request, were found to be continuations of the earlier protected concerted activity. In finding the Section 8(a)(1) discharge, the Board relied on both Wright Line, 251 NLRB 1083 (1980), enfd. 662 F. 2d 899 (1st Cir. 1981), cert. denied, 445 U.S. 989 (1982), and Atlantic Steel/Felix Industries, 245 NLRB 814 (1979) 331 NLRB 144, 144-46 (2000), enf. denied on other grounds and remanded 251 F.3d 1051 (D.C. Cir. 2001) analyses. [HTML] [PDF]

(Chairman Schaumber and Member Liebman participated.)

Charge filed by Darrell Chapman, an individual; complaint alleged violation of Section 8(a)(1). Hearing at Newberry, Sept. 17-18, 2007. Adm. Law Judge Keltner W. Locke issued his decision Oct. 24, 2007.

American Directional Boring, Inc., d/b/a ADB Utility Contractors, Inc. (14-CA-27386, et al.; 353 NLRB No. 21) St. Louis, MO, Sept. 30, 2008. The Board adopted the administrative law judges' findings that the Respondent committed multiple violations of Section 8(a)(1) and (3) following the Union's efforts to organize employees in early 2003. The Board also adopted the judges' finding that a Gissel bargaining order was necessary and warranted under NLRB v. Gissel Packing Co., 395 U.S. 575 (1969), in light of the egregiousness and pervasiveness of the Respondent's unlawful activity. [HTML] [PDF]

The Board affirmed the judge's findings that the Respondent committed multiple violations of Section 8(a)(1), which included impliedly threatening employees with job loss, futility, and closure, soliciting union supporters to quit their employment, impliedly threatening discipline for wearing Union pins, impliedly threatening reduction or loss of their bonus, threatening loss of insurance and retirement plan, threatening to subcontract more work, interrogating employees about their union activities and threatening unspecified reprisals because of their union activities, and creating an impression of surveillance. The Respondent had not excepted to any of these findings.

In addition, the Board affirmed the judge's findings that the Respondent repeatedly violated Section 8(a)(3) and (1) by discharging 13 union supporters. In doing so, the Board found that the General Counsel carried his initial burden and established that union activity was a motivating factor in the discharge of all 13 employees. The Board also agreed with the judge that every one of the reasons proffered by the Respondent in defense of the discharges was pretextual. The Board rejected the Respondent's contentions that some of the discharged employees were statutory supervisors.

Finally, the Board affirmed the judges' finding that a category I *Gissel* bargaining order was warranted in light of the Respondent's extensive record of unlawful conduct. In doing so, the Board relied on the Respondent's numerous, widely communicated threats of plant closure and job loss, its unlawful discharge of 22 percent of the bargaining unit, its fabrication of evidence against union supporters, the involvement of the Respondent's general manager and its pervasive wrongdoing in violation of Section 8(a)(1).

The Board rejected the Respondent's contentions that a *Gissel* bargaining order would be inappropriate due to turnover in management and the bargaining unit since the close of the hearing. Affirming the judge's findings, the Board found that turnover since the Respondent's commission of the unfair labor practices does not militate against a bargaining order.

The Board also rejected the Respondent's argument that a bargaining order is no longer a viable remedy based on the passage of time since the violations were committed. The Board found that the passage of time will not dissipate the coercive effects of the Respondent's unlawful coercive conduct. In doing so, the Board stated that "although almost 5 years have elapsed since the commission of the last of the Respondent's unfair labor practices, the length of time the case has been with the Board is consistent with the ordinary course of litigation." The Board emphasized that the case was not fully briefed to the Board until late last year. The Board also stated that the Respondent was at least partially responsible for the delay in this case based on its shifting posture on the supervisory status issue.

(Chairman Schaumber and Member Liebman participated.)

Charges filed by Electrical Workers [IBEW] Local 2; complaint alleged violations of Section 8(a)(1) and (3). Hearing at St Louis, 16 days between Aug. 4, 2003 and Feb. 5, 2004. Adm. Law Judge Benjamin Schlesinger issued his decision May 10, 2005. Adm. Law Judge Paul Buxhaum issued his supplemental decision Aug. 23, 2007.

Camelot Terrace, Inc. (13-CA-43936, 44044; 353 NLRB No. 20) Streator, IL Sept. 29, 2008. The Board adopted the administrative law judge's findings that the Respondent violated Section 8(a)(3) and (1) of the Act by issuing warnings to and discharging employee Cheryl Henson. Henson, subsequent to her first week of work, had never received discipline in over 17 years of employment with the Respondent until she and her daughter testified as union witnesses in an arbitration hearing against the Respondent. Thereafter, within a four month period, she was disciplined twice and finally discharged for alleged poor work performance. The judge found that each of the warnings and the discharge were contrived and were motivated by the Respondent's animus against the Union. The judge also discredited the Respondent's explanations for its actions and found them pretextual. The Board adopted the judge's finding of a violation. [HTML] [PDF]

The Board refrained from adopting the judge's dismissal of a complaint allegation that the Respondent violated Section 8(a)(3) and (1) by discharging employee Crystal Lopez. Rather, the Board found that the judge failed to articulate a basis for many of his credibility determinations and failed to address evidence that arguably contradicted a number of his factual findings regarding the dismissal. The Board therefore severed and remanded the complaint allegation to the judge. On remand, the judge is to make reasoned credibility resolutions and findings of fact that detail the supporting evidence and either discredit or reconcile the evidence that contradicts those resolutions and factual findings.

The Board stated: "In remanding, we stress that we do not pass on the merits of this allegation or the ultimate validity of the judge's prior findings and credibility resolutions; we simply ask that he explain his findings and credibility resolutions in sufficient detail for our review."

(Chairman Schaumber and Member Liebman participated.)

Charges filed by Service Employees Local 4; complaint alleged violation of Section 8(a)(1) and (3). Hearing at Peoria, Aug. 28-29, 2007. Adm. Law Judge Laurence W. Cullen issued his decision March 4, 2008.

Case Farms of North Carolina, Inc. (11-CA-21378, 21379; 353 NLRB No. 26) Morganton, NC Sept. 30, 2008. The Board found that the Respondent violated Section 8(a)(1) of the Act by discriminatorily discharging employees Luz Rodriguez and Evodia Dimas because they engaged in the protected concerted activity of complaining to the local press about employees' working conditions. [HTML] [PDF]

The Respondent's employees engaged in an in-plant work stoppage protesting a change in the Respondent's work policies. Employees Rodriguez and Dimas were the only employees quoted by name voicing employee complaints in a local newspaper article published after the work stoppage. The Respondent discharged Dimas, and suspended Rodriguez, later to discharge her, within 48 hours of the Respondent learning they voiced complaints about employee working conditions to the local press. The Board found this timing to be strong evidence of an unlawful motive by the Respondent in discharging Rodriguez and Dimas.

Regarding Rodriguez, who the Respondent discharged for throwing product, the Board affirmed the administrative law judge's finding that the Respondent had failed to conduct an investigation regarding her conduct, and treated her disparately than other employees who had not been discharged for similar conduct. The Board thus affirmed the judge's finding that the Respondent had a discriminatory motivation in discharging Rodriguez, and that the Respondent had failed to show that it would have discharged her even in the absence of her protected activity. Reversing the judge, the Board found that the Respondent discriminatorily discharged Dimas, based on the timing of her discharge; that it occurred in conjunction with the unlawful

discharge of Rodriguez for the same protected activity; its reliance on a false reason for discharging her; and its disparate treatment of her than other employees who had not been discharged in similar circumstances of requesting a work accommodation due to an injury.

The Board adopted the judge's recommended backpay and reinstatement remedy for the unlawful discharge of Rodriguez. Regarding Dimas, the Board, consistent with its practice, ordered conditional provisions for reinstatement and backpay. The Board thus ordered the Respondent to offer Dimas reinstatement subject to the condition that she presents, within a reasonable time, INS form I–9 and the appropriate supporting documents proving legal immigrant status. The Board left to the compliance stage of the proceeding a determination of the backpay due Dimas, observing that the Board is obligated to toll backpay for any part of the backpay period during which Dimas is not lawfully entitled to be in the United States.

(Chairman Schaumber and Member Liebman participated.)

Charges filed by Western North Carolina Workers' Center; complaint alleged violation of Section 8(a)(1). Hearing at Morganton, July 16-18, 2007. Adm. Law Judge John H. West issued his decision Sept. 28, 2007.

Charter School Administration Services, Inc. (7-RC-23108; 353 NLRB No. 35) Waterford, MI Sept. 30, 2008. The Board found that the Employer, a private, for-profit corporation, was not a political subdivision of the State of Michigan and, therefore, not exempt from the Board's jurisdiction. The Employer had a contract to operate and manage the Academy of Waterford, a public charter school. The Employer managed the educational program, managed the financial aspects of the Academy's operations, and hired and paid all personnel who worked at the Academy. Following the test set out in NLRB v. Natural Gas Utility District of Hawkins County, 402 U.S. 600 (1971), the Board examined the operations of the Employer and found that the members of the Employer's board of directors are appointed and removed by the corporation's shareholders and not by any public officials. The Board further found no indication that any director or corporate officer had "direct personal accountability to public officials or the general electorate." The Board concluded that because the Employer was not administered by individuals who are responsible to public officials or the general electorate, the Employer was not a political subdivision of the State of Michigan and was not exempt from the Board's jurisdiction on that basis. The Board further found that the Employer meets the statutory definition of "employer" because the Employer controls some matters pertaining to the employment relationship of the petitioned-for teachers and counselors who work at the Academy of Waterford. The Employer has the sole responsibility to hire, fire, assign, discipline and pay the petitioned-for employees. The Board concluded that as the Employer is an employer within the meaning of the Act and meets the Board's monetary jurisdictional standards, the Board should assert jurisdiction over the Employer. The Board reversed the Regional Director and reinstated the petition seeking an election among teachers and counselors employed by the Employer who work at the Academy. [HTML] [PDF]

Eugene Iovine, Inc. (29-CA-21052, et al.; 353 NLRB No. 36) Farmingdale, NY Sept. 30, 2008. The Board adopted the administrative law judge's finding that the Respondent violated Section 8(a)(5) and (1) of the Act by laying off employees without providing the Union timely notice and an opportunity to bargain over the layoffs. [HTML] [PDF]

The Board rejected the Respondent's affirmative defense that it was merely adhering to a consistent past practice of unilaterally implementing layoffs in response to work-or-weather-related delays on its construction projects. The Board found that the Respondent, which bears the burden of proving the existence of its past practice, failed to present evidence showing when, how frequently, or under what circumstances its asserted past practice of unilateral layoffs occurred. Absent such evidence, the Board concluded that the Respondent had not demonstrated that the challenged layoffs were permitted as a continuation of past practice. The Board found it unnecessary to pass on the judge's discussion of whether a past practice based on the acquiescence of a prior union can be relied on to unilaterally impose changes on a new union.

(Chairman Schaumber and Member Liebman participated.)

Adm. Law Judge David I. Goldman issued his supplemental decision Aug. 31, 2006.

Faurecia Exhaust Systems, Inc. (8-CA-37192, et al.; 353 NLRB No. 34) Toledo, OH Sept. 30, 2008. There are two issues presented in this case -- 1) whether the Respondent violated Section 8(a)(1) of the Act by telling employees during an organizational campaign that they could not post union literature in the production facility's lunchroom without management permission, and 2) whether the Respondent violated Section 8(a)(3) by warning and suspending an employee after he asked two coworkers to obtain for him the names, addresses and phone numbers of unit employees (contact information) for use in the organizing campaign. The administrative law judge found both violations. The Board reversed the Section 8(a)(1) violation and remanded the Section 8(a)(3) violation to the judge for further analysis. [HTML] [PDF]

With respect to the Section 8(a)(1) violation, the Board found that the judge erroneously applied the legal standard for determining whether workplace no-distribution rules are lawful. The Board noted that the complaint did not allege a violation of a no-distribution rule; rather, it alleged an unlawful prohibition against the posting of union literature. The law regarding noposting rules is that an employer may prohibit such postings, provided that it does not engage in unlawful discrimination. Applying this standard, the Board reversed the Section 8(a)(1) violation because there was no evidence that the Respondent's no-posting rule was applied in a discriminatory fashion.

With respect to the Section 8(a)(3) violation, the Respondent argued that employee Marvin Blue, by asking two coworkers to obtain for him the contact information of unit employees, sought to surreptitiously circumvent a handbook provision that assured employees

that their personnel information would not be released to outside parties without their permission. The Respondent argued that this conduct was unprotected and that it lawfully disciplined Blue.

The judge found that the Respondent's discipline of Blue was unlawful under the analysis set forth in *Wright Line*, 251 NLRB 1083 (1980). The judge found that the General Counsel met his burden under *Wright Line* of showing that Blue engaged in protected activity that was a motivating factor behind the Respondent's discipline of Blue. The judge rejected the Respondent's argument that Blue's conduct in seeking unit employees' contact information was unprotected, and concluded that by failing to meet its rebuttal defense under *Wright Line*, a violation of Section 8(a)(3) was established. The judge added, however, that even if Blue's conduct in seeking employees' contact information was unprotected, the Respondent's discipline of Blue was still unlawful because Blue engaged in protected conduct months earlier by soliciting employee support for the Union and that this conduct also was a motivating factor behind the Respondent's discipline of Blue.

The Board found it necessary to remand this part of the judge's decision for clarification as to whether he applied a *Wright Line* pretext analysis in rejecting the Respondent's rebuttal defense, or a *Wright Line* dual-motive analysis. Specifically, the judge was instructed to explain whether he rejected as pretextual the Respondent's defense that it relied on Blue's assertedly unprotected conduct in disciplining him, or whether he rejected the Respondent's defense on the basis that it failed to establish that despite Blue's earlier protected conduct in soliciting union support among employees, it would have disciplined him in any event because of the assertedly unprotected conduct in surreptitiously seeking employees' contact information.

(Chairman Schaumber and Member Liebman participated.)

Charges filed by Auto Workers UAW Region 2-B; complaint alleged violations of Section 8(a)(1) and (3). Hearing at Toledo, Jan. 15-16, 2008. Adm. Law Judge Ira Sandron issued his decision April 2, 2008.

Hanson Aggregates BMC, Inc. (4-CA-33330, et al.; 353 NLRB No. 28) Penns Park, PA Sept. 30, 2008. The Board reversed the administrative law judge's findings that: 1) the Respondent did not violate Section 8(a)(5) of the Act as to the Union's request for information regarding the Respondent's proposal to continue its current health care plan, administered by HighMark Blue Cross; 2) the Respondent did not violate Section 8(a)(5) as to the Union's request for copies of administrative manuals, rules, and regulations with respect to a proposed Aetna health plan; and 3) the Respondent violated Section 8(a)(5) as to the Union's request for information about dual (i.e., two-person) health care coverage. The Board largely affirmed the judge's other findings, which concerned alleged violations of Section 8(a)(5), (3), and (1). [HTML] [PDF]

In affirming the judge's finding that the Respondent lawfully discharged employee Glen Peabody, the Board found, contrary to the judge, that the General Counsel met his initial burden of proving that union activity was a motivating factor in the Respondent's decision to discharge Peabody. However, the Board agreed with the judge's alternative finding that the Respondent met its rebuttal burden. The Board found it unnecessary to pass on the General Counsel's exceptions to the judge's failure to find additional Section 8(a)(1) violations based on statements by Supervisor Doug Chilson to Peabody because any such findings would have been cumulative to violations found and would not have materially affected the remedy or the Board's analysis of Peabody's discharge.

In affirming the judge's finding that the Respondent violated Section 8(a)(5) by implementing seven bargaining proposals in the absence of a good-faith impasse in overall negotiations, the Board found it unnecessary to rely on the judge's finding that the outstanding information requests precluded the possibility of impasse.

With regard to the Union's request for information about the Respondent's dental premium holiday, the Board affirmed the judge's finding that the Respondent unlawfully failed to provide information requested in items 6 and 7 of the Union's request. Noting that both the General Counsel and the Respondent agreed that the information requested in item 8 had already been provided, the Board dismissed the allegation as to that item. The Board modified the judge's recommended remedy by, inter alia, requiring the Respondent to make a reasonable effort to secure certain information from HighMark Blue Cross and Aetna, and, if any of that information remains unavailable, to explain and document the reasons for its continued unavailability.

(Chairman Schaumber and Member Liebman participated.)

Charges filed by Operating Engineers Local 542; complaint alleged violations of Section 8(a)(1), (3), and (5). Hearing at Philadelphia, May 18-19 and July 17-20, 2006. Adm. Law Judge Bruce D. Rosenstein issued his decision Oct. 23, 2006.

Laurel Bay Health & Rehabilitation Center (22-CA-27192, et al.; 353 NLRB No. 24) Keansburg, NJ Sept. 30, 2008. In this case, the Board adopted the administrative law judge's findings, based on a modified rationale, that the Respondent violated Section 8(a)(5) of the Act by prematurely declaring impasse and unilaterally implementing certain changes to terms and conditions of employment. The Board further adopted the judge's findings that the Respondent violated Section 8(a)(5) by: 1) refusing to supply information requested by the Union, 2) failing to meet with the Union since Oct. 4, 2005 for the purpose of negotiating a successor collective-bargaining agreement, and 3) unilaterally eliminating a transportation benefit providing bus or van service to and from work for unit employees. [HTML] [PDF]

Charges filed by SEIU 1199 New Jersey Health Care Union; complaint alleged violation of Section 8(a)(1), (3), and (5). Hearing at Newark, Feb. 13, 15-16, and March 14, 2007. Adm. Law Judge Steven Davis issued his decision June 8, 2007.

Majestic Towers, Inc. d/b/a Wilshire Plaza Hotel (31-CA-28135, et al.; 353 NLRB No. 29) Los Angeles, CA Sept. 30, 2008. The Board affirmed, on modified grounds, the administrative law judge's findings that the Respondent's unfair labor practices precluded lawful impasse in the parties' contract negotiations and, therefore, the Respondent's unilateral implementation of parts of its final contract offer violated Section 8(a)(5) of the Act. [HTML] [PDF]

The judge found that the Respondent's numerous, unremedied unfair labor practices were "so extensive and pervasive as to make it practically impossible for the parties to have engaged in good-faith negotiations leading to impasse." However, the Board found that it is well-established that "[n]ot all unremedied unfair labor practices committed ... will lead to the conclusion that impasse was declared improperly... Only 'serious unremedied unfair labor practices that *affect the negotiations*' will taint the asserted impasse." *Dynatron/Bondo Corp.*, 333 NLRB 750, 752 (2001). Accordingly, in affirming the judge's findings, the Board relied on only two of the unfair labor practices undisputedly committed by the Respondent that adversely affected the negotiations: the Respondent's failure to contribute to the Union's Health and Welfare Fund, and its failure to furnish to the Union the requested detailed cost calculations for the Respondent's economic proposals on core bargaining issues. Member Liebman found it unnecessary to pass on whether the Respondent's other unfair labor practices were sufficiently serious to affect the negotiations.

Although the Respondent did not except to the judge's findings that it failed to comply with several provisions of the collective-bargaining agreement, the Respondent excepted to his finding that it had repudiated the agreement. The Board affirmed the judge's finding of general contract repudiation but found no need to pass on whether this violation precluded impasse. The Board also did not rely on the judge's discussion of *Republic Die & Tool Co.*, 343 NLRB 683 (2004) related to contract repudiation.

The Respondent and General Counsel excepted to the judge's failure to analyze the parties' bargaining conduct under the multi-factor test of *Taft Broadcasting Co.*, 163 NLRB 475, 478 (1967), enfd. 395 F.2d 622 (D.C. Cir. 1968), to decide whether a bargaining impasse existed. The Board found no need to examine other aspects of the negotiations as the two unfair labor practices precluded the possibility of finding a lawful impasse. The Board further found it unnecessary to pass on the General Counsel's cross-exceptions to the judge's dismissal of an additional Section 8(a)(1) interrogation allegation and an additional Section 8(a)(5) allegation that the Respondent blocked the Union's access to a bulletin board as finding those violations would be cumulative of other uncontested, similar violations and would not materially affect the remedy. And the Board denied the General Counsel's cross-exception seeking compound interest for any backpay awarded.

Charges filed by UNITE HERE Local 11, Los Angeles Hotel-Restaurant Employer-Union Welfare Fund, Los Angeles Hotel-Restaurant Employer-Union Retirement Fund, and Legal Fund of Hotel and Restaurant Employees of Los Angeles; complaint alleged violations of Section 8(a)(1), (3), and (5). Hearing at Los Angeles, Oct. 15-19 and Nov. 26-28, 2007. Adm. Law Gregory Z. Meyerson issued his decision April 7, 2008.

New Process Steel, LP (25-CA-30632; 353 NLRB No. 25) Butler, IN Sept. 30, 2008. The Board granted the General Counsel's motion for summary judgment, finding that the Respondent violated Section 8(a)(5) and (1) of the Act by withdrawing recognition from the Union during the effective term of a binding collective-bargaining agreement. The Board accordingly denied the Respondent's Cross-motion for Summary Judgment. [HTML] [PDF]

In *New Process Steel, LP*, 353 NLRB No. 13 (2008), the Board found that the Respondent and the Union reached a binding collective-bargaining agreement, effective Aug. 12, 2007, and that the Respondent unlawfully repudiated that agreement on Sept. 11, 2007. The Respondent admitted that it withdrew recognition from the Union on Sept. 12, 2007, an act barred by the parties' binding contract. The Board therefore found that, as a matter of law, the Respondent unlawfully withdrew recognition from the Union on Sept. 12, 2007.

(Chairman Schaumber and Member Liebman participated.)

Charge filed by Machinists District Lodge 34; complaint alleged violation of Section 8(a)(1) and (5). General Counsel filed motion for summary judgment July 10, 2008 and Respondent filed cross motion for summary judgment July 29, 2008.

NYP Holdings, Inc., d/b/a The New York Post (2-CA-38209; 353 NLRB No. 30) Bronx, NY Sept. 30, 2008. The Board reversed on due process grounds the administrative law judge's findings that the Respondent violated Section 8(a)(3) and (1) of the Act by discharging Ernest Grant for his protected concerted activities. The Board found that the judge's reliance on an unlitigated theory of violation deprived the Respondent of its right to due process. [HTML] [PDF]

(Chairman Schaumber and Member Liebman participated.)

Charge filed by Operating Engineers Local 94-94A-94b; complaint alleged violations of Section 8(a)(1) and (3). Hearing at New York, Dec. 11-12, 2007. Adm. Law Judge Raymond P. Green issued his decision Feb. 8, 2008.

Positive Electrical Enterprises, Inc. and its alter egos CNY Electrical Maintenance Corp. and CNY Electrical Service Group, Inc. d/b/a Positive Electric (3-CA-25037; 353 NLRB No. 27) Mattydale, NY Sept. 30, 2008. The General Counsel filed a motion for default judgment on the ground that the Respondents failed to file legally sufficient answers to a compliance specification. The Board rejected the General Counsel's argument that the pro se respondents' filed letters were insufficient answers because they were not sworn to or served on the other parties. The Board noted that under certain circumstances, it has accepted a pro se respondent's unsworn answer to a compliance specification. The Board also found that the General Counsel failed to show any prejudice to the parties as a result of the Respondents' failure to serve their letters. [HTML] [PDF]

The Board also rejected the General Counsel's argument that the Respondents' letters failed to sufficiently deny all of the specification allegations. The Board found that the Respondents' letters constituted general denials of the specification's assertion that newly-named Respondent Maintenance was an alter ego of original Respondent Positive. To this end, the Board stated that a general denial of alter ego status is sufficient to warrant a hearing. Thus, the Board ordered a hearing on that issue. However, the Board found that the Respondents' letters failed to deny any of the remaining specification allegations. Accordingly, the Board admitted as true all allegations concerning backpay owed and payments owed to benefit funds.

(Chairman Schaumber and Member Liebman participated.)

General Counsel filed motion for default judgment June 9, 2008.

PPG Aerospace Industries, Inc. (10-CA-36530 and 10-RC-15611; 353 NLRB No. 23) Huntsville, AL Sept. 30, 2008. The Board, reversing the administrative law judge, found that lead persons ("leads") were not supervisors, overruled the Union's challenges to the leads' ballots, and remanded the representation case to the Regional Director to open the overruled challenged ballots and issue a revised tally of ballots. The Board found that the Union did not prove the leads, rather than admitted supervisors, controlled the leads' assignment decisions, and that the Union accordingly did not prove that the leads exercised independent judgment. The Board also found that the judge did not adequately explain two credibility determinations upon which the judge relied in finding two Section 8(a)(1) violations. The Board noted that it was unclear to what extent the judge relied on demeanor in making the credibility determinations and that the judge did not address inconsistencies between the credited witness' testimony and a written incident report she submitted to the Union. The Board remanded the unfair labor practice case to the judge to reconsider his credibility determinations, to further explain his credibility determinations, and to modify, if necessary, the two Section 8(a)(1) findings. The Board held in abeyance the remaining election objection and unfair labor practice issues pending the actions on remand. [HTML] [PDF]

Charges filed by Auto Workers; complaint alleged violations of Section 8(a)(1). Hearing at Huntsville, April 30 and May 1-2, 2007. Adm. Law Judge Lawrence W. Cullen issued his decision Oct. 19, 2007.

The Continental Group, Inc., Sunset Harbour South Condominium Assn., Inc., Joint Employers, and The Executive Condominium Assn., Inc., Joint Employers (12-CA-24045, et al.; 353 NLRB No. 31) Miami Beach and Hollywood, FL Sept. 30, 2008. The Board inter alia: agreed with the administrative law judge that Respondent The Continental Group, Inc. and Respondent Sunset Harbour South Condominium Association, Inc. were joint employers; affirmed the judge's finding that Respondent Continental violated Section 8(a)(1) of the Act by photographing employees' participation in a mock election event; found, contrary to the judge, that Sunset Harbour violated Section 8(a)(1) by Continental's conduct in that regard; affirmed the judge's finding that Continental and Sunset Harbour violated Section 8(a)(1) by promulgating and maintaining an overbroad no-access rule; found, contrary to the judge, that the first written discipline issued to employee Phillip Gonzalez on Sept. 1, 2004 was lawful (in this regard, the Board emphasized that the activities for which Gonzalez was disciplined were not protected by Section 7); affirmed the judge's finding that the Respondents did not violate Section 8(a)(3) by discharging or constructively discharging Gonzalez for engaging in union activity; found that the Respondents' conduct in this regard also did not violate Section 8(a)(1); and, found that the second warning issued to Gonzalez on Sept. 1 was lawful. [HTML] [PDF]

(Chairman Schaumber and Member Liebman participated.)

Charges filed by Service Employees Local 11; complaint alleged violations of Section 8(a)(1) and (3). Hearing at Miami, Sept. 12-15, Nov. 14-17, 2005, and Jan. 9-11, 2006. Adm. Law Judge George Carson II issued his decision March 15, 2006.

LIST OF DECISIONS OF ADMINISTRATIVE LAW JUDGES

Coastal Cargo Co., Inc. (Teamsters Local 270) New Orleans, LA Sept. 29, 2008. 15-CA-18215; JD(ATL)-37-08, Judge Michael A. Marcionese.

N & R Quality Care, LLC (an Individual) Fredericksburg, VA Sept. 29, 2008. 5-CA-34079; JD-53-08, Judge Michael A. Rosas.

Paint America Services, Inc. et al. (Painters District Council 22) Saline, MI Sept. 29, 2008. 7-CA-47564; JD(ATL)-36-08, Judge John H. West.

Compass Group USA, Inc. d/b/a ESS Support Services Worldwide, Inc. (Steelworkers Local 8248) Christiansted, St. Croix USVI Oct. 3, 2008. 24-CA-10874; JD(ATL)-30-08, Judge William N. Cates.

NO ANSWER TO COMPLAINT

(In the following case, the Board granted the General Counsel's motion for summary judgment based on the Respondent's failure to file an answer to the complaint.)

Forest Hills Supermarket, Inc. d/b/a Forest Hills Family Foods (Food & Commercial Workers Local 880) (8-CA-37666; 353 NLRB No. 37) Cleveland, OH Sept. 30, 2008. [HTML] [PDF]

TEST OF CERTIFICATION

(In the following cases, the Board granted the General Counsel's motion for summary judgment on the grounds that the Respondent has not raised any representation issue that is litigable in the unfair labor practice proceeding.)

Multi-Flow Dispensers of Toledo, Inc. d/b/a Beverage Dispensing Systems (Teamsters Local 20) (8-CA-37864; 353 NLRB No. 22) Toledo, OH Sept. 29, 2008. [HTML] [PDF]

Mashantucket Pequot Gaming Enterprise d/b/a Foxwoods Resort Casino (UAW) (34-CA-12081; 353 NLRB No. 32) Mashantucket, CT Sept. 30, 2008. [HTML] [PDF]

LIST OF UNPUBLISHED BOARD DECISIONS AND ORDERS IN REPRESENTATION CASES

(In the following cases, the Board considered exceptions to Reports of Regional Directors or Hearing Officers)

DECISION AND ORDER REMANDING [proceeding to administrative law judge for appropriate action]

FedEx Home Delivery, an Operating Division of FedEx Ground Package Systems, Inc., Windsor, CT, 34-RC-2205, Sept. 29, 2008 (Chairman Schaumber and Member Liebman)

(In the following cases, the Board denied requests for review of Decisions and Directions of Elections (D&DE) and Decisions and Orders (D&O) of Regional Directors)

W.W. Grainger, Inc., Jacksonville, FL, 12-RC-9321, Oct. 2, 2008 (Chairman Schaumber and Member Liebman)

Miscellaneous Board Decisions and Orders

ORDER [denying Petitioner's request for special permission to appeal Regional Director's order, granting Union's motion to strike, and denying Petitioner's motion to open hearing]

LAX Hotel Ventures, LLC, Los Angeles, CA, 31-RD-1557, 1580, Sept. 29, 2008
